IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 1718 Disciplinary Docket No. 3
	:	No. 132 DB 2009
v.	:	
	:	Attorney Registration No. 60295
LISA ANNE WELKEY, Respondent	:	(Luzerne County)

ORDER

PER CURIAM:

AND NOW, this 20th day of July, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 10, 2011, it is hereby

ORDERED that Lisa Anne Welkey is suspended from the Bar of this Commonwealth for a period of three years and she shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 7/20/2011

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 132 DB 2009
v.	:	Attorney Registration No. 60295
LISA ANNE WELKEY Respondent	:	(Luzerne County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On August 24, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Lisa Anne Welkey. The Petition charged Respondent with violations of the Rules of Professional Conduct in three separate client matters. Respondent filed an Answer to Petition on September 23, 2009.

A disciplinary hearing was held on December 14, 2009, and January 19, 2010, before a District III Hearing Committee comprised of Chair Jeffrey P. Edmonds,

Esquire, and Members Marc J. Farrell, Esquire, and Richard B. Henry, Esquire. Respondent was represented at the hearing by Gerald A. Lord, Esquire. Mr. Lord subsequently withdrew his appearance on October 27, 2010.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 13, 2010, concluding that Respondent had engaged in professional misconduct and recommending that she be suspended for a period of five years.

This matter was adjudicated by the Disciplinary Board at the meeting on January 19, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 2700, 601 Commonwealth Avenue, PO Box 62485, Harrisburg, PA 17106-2485, is invested, under Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving professional misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Lisa Anne Welkey. She was born in 1959 and admitted to practice in Pennsylvania in 1990. Her registered address is Dime Bank Building, #318, 49 South Main Street, Pittston PA 18640. She is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. A Joint Stipulation and a Supplemental Stipulation were entered into by the parties. Respondent reviewed these Stipulations with counsel and they were submitted with her consent.

4. At all pertinent times, Respondent maintained an IOLTA Account at the First Liberty Bank and Trust Company, in Pittston, Pennsylvania.

5. At all pertinent times, the Trust Account was the only fiduciary account Respondent listed on her annual Attorney Registration filings, which Respondent certified as accurate, as an account in which Respondent held funds of a client or third party that were subject to Rule of Professional Conduct 1.15.

6. Pursuant to subpoenas issued by Petitioner, First Liberty Bank produced all records for the Trust Account that the bank maintains in the normal course of business, including periodic statements, deposited items, deposit slips, checks drawn on and paid from the account, debit and credit memoranda, signature cards, and any other materials reflecting the Trust Account activity for the period of October 21, 2002 through October 30, 2009.

7. Petitioner summarized the Trust Account records produced by First Liberty Bank by causing the activity, and the nature thereof, to be reflected on spreadsheets. PE1(a)(b)(c)

8. The signature card provided by the bank for the Trust Account reflects that Respondent was the only signatory for checks drawn on that account in the periods reflected on the spreadsheets,

9. The signature card for the Trust Account does not allow facsimile signature stamps.

10. The spreadsheets prepared by Petitioner of the Trust Account fully and accurately summarize and set forth the activity in that account as reflected by the records provided by the bank.

11. Respondent reviewed the history of the Trust Account as reflected in the spreadsheets and agrees that the activity in the account is accurately reflected.

12. Beginning in July 1999, Richard Haeseker, Respondent's husband, became her office manager and one of his responsibilities was handling the office finances, including maintaining the Trust Account.

13. Respondent was a sole practitioner and also employed a secretary and a file clerk.

14. Mr. Haeseker kept the financial records in locked file cabinets in a locked office and Respondent had keys for the office and the cabinets.

15. Respondent would occasionally review the statements for the Trust Account.

16. Mr. Haeseker had no signature authority on the Trust Account.

17. On December 30, 2005, Respondent and Mr. Haeseker abruptly separated and his employment was immediately terminated when Respondent was advised that he was attempting to gather control of their assets and intended leaving her for another woman. Respondent immediately went to her bank and removed the ability of Mr. Haeseker to access any funds, and changed the locks on her office. Respondent had a serious concern that her husband might try to loot office accounts.

18. After Respondent and Mr. Haeseker separated, Respondent maintained the records for the Trust Account and kept lists of receipts and disbursements.

19. In 2006, Respondent believed her financial records appeared to be as they had always been.

20. Respondent resided with her aunt from January to July 2006, was in the office in her residence daily in 2006, and did nothing to try and secure her financial records, which were at the office in her residence.

21. In November of 2006, Respondent moved her office and all of her records from her residence.

22. In February 2007, Respondent was in an automobile accident from which it took her 13 months to fully recover.

23. In March 2007, Respondent had Mr. Haeseker removed from their residence pursuant to a Protection From Abuse order (PFA) and obtained exclusive possession of the residence. It was about this time that she realized that some of her financial records might be missing and that the Trust Account records kept in the file cabinets, and related computer records, were gone. Respondent found some records in tubs in the back of Mr. Haeseker's vehicle, which included fee agreements and copies of checks for receipts and disbursements relating to her practice. The records found included copies of settlements and related checks but these were not produced to Petitioner in response to the subpoena for Respondent's financial records as they were for periods prior to 2002.

Taylor Estate - DPW Matter - Trust Account Problems

24. Respondent had represented Richard and Carol Coombs relative to litigation brought against them by Geisinger Hospital, and an affiliate of the hospital, concerning medical care for which the Coombs were insured. Geisinger had sued Mr. and Mrs. Coombs in 2001, and Respondent in 2001 sued the insurer on behalf of Mr. and Mrs.

Coombs. Both Geisinger and Mr. and Mrs. Coombs received judgments in their favor as a result of the suits. Respondent's services had been obtained through Hyatt Legal Services and no legal fees were owed to Respondent.

25. On December 20, 2002, $6,908.66 was deposited to the Trust Account representing the settlement received from United Healthcare Corporation, Mr. and Mrs. Coombs' insurer.

26. Of the $6,908.66 deposited to the Trust Account, $1,169.06 was immediately distributable to Mr. and Mrs. Coombs.

27. Of the $6,908.66 deposited to the Trust Account, $5,739.60 was immediately distributable to the Geisinger Medical Center for the obligations of Mr. and Mrs. Coombs.

28. In December 2002, Respondent advised her clients that a settlement with their insurer had been reached, but Mr. and Mrs. Coombs were unaware of Respondent's receipt of the settlement funds.

29. In 2003 and 2004, Mr. and Mrs. Coombs would periodically contact Respondent's office about the settlement funds. Office staff informed Mr. and Mrs. Coombs that they would have to speak to Respondent about the matter. No one ever called Mr. and Mrs. Coombs and informed them of the status of the funds and their obligations to Geisinger.

30. Respondent was aware of some of the calls from her clients in 2003 and 2004 but did not call them back.

31. Respondent had no authority to personally use any of the settlement funds received from United Healthcare.

32. The balance in the Trust Account on June 17, 2003 was $333.61, representing a shortage as to the Coombs entrustment of $6,576.05.

33. Relative to the Wisneski Estate, Respondent received $13,000 from the proceeds of the sale of real estate, which sum was paid over by the attorney for the buyer and was to be escrowed for the payment of PA Transfer Inheritance Tax. The $13,000 was deposited to the Trust Account on March 8, 2004, on a balance then in the account of $772.61. Respondent had no authority to use any of the $13,000 for any other purpose.

34. No attorney fee was payable to Respondent from the $13,000 escrowed for the Wisneski Estate, yet a Trust Account check dated March 16, 2004, in the amount of $5,000 was made payable to "Lisa A. Welkey", having the notation "Atty fee". This left a balance in the account less than that entrusted for the Wisneski Estate.

35. For the Wisneski Estate, Respondent paid from the Trust Account Inheritance Tax of $4,969.51 on June 10, 2004, upon the filing of the Return; after audit, an additional tax of $587.51 was paid on September 29, 2004.

36. By Trust Account check in the amount of $1,000, dated October 29, 2004, Michael Wisneski was paid for "Estate Admin Compensation".

37. By Trust Account check in the amount of $6,442.98 dated November 9, 2004, payable to the Wisneski Estate, and reflecting the notation "Transfer of Settlement Proceeds," Respondent returned to the estate the balance due from the $13,000 she escrowed on March 8, 2004.

38. The Trust Account check dated November 9, 2004 was paid in all or substantial part from funds in the Account other than those from the $13,000 deposit on

March 8, 2004. All funds then in the Trust Account were held for or on behalf of other clients of Respondent.

39. In 2005, Richard Coombs was admitted to Geisinger Hospital for medical treatment and was then advised of the outstanding obligation to the hospital from his prior treatment, for which Geisinger had sued him in 2001. Respondent was contacted about the need to satisfy this prior obligation.

40. Respondent immediately attempted to pay Geisinger by Trust Account check dated July 12, 2005, in the amount of $5,739.60.

41. The Trust Account was overdrawn by $4,088.29 . The bank called Respondent's office in September 2005 and she immediately went to her bank and had funds transferred to cover the overdraft and requested that the bank provide recent account records to reflect the reasons for the overdraft.

42. Respondent asked Richard Haeseker to determine the reason for the overdraft and a few days later he advised her that a deposit had been made to the wrong account. Respondent did nothing to verify this.

43. Respondent did not attempt to determine the specific nature of the September 12, 2005 overdraft and was unaware that it related to the Coombs representation until several years later when she received from Petitioner the activity summaries for her Trust Account.

44. On September 26, 2005, the Trust Account was overdrawn $726.10 as a result of the presentment of a check dated July 13, 2005, in the amount of $1,169.06, and payable to Richard and Carol Coombs, notated as "balance of payment of judgment."

45. The September 26, 2005 overdraft was covered by a transfer of $1,000 from another account.

46. At the time of the September 2005 overdrafts in the Trust Account, Respondent was also out of trust the entire $43,127.34 portion of settlement proceeds that she had received in September 2004, and then deposited to her Trust Account, which sum was an obligation for the Sophronia A. Taylor Estate to the Pennsylvania Department of Public Welfare (DPW).

47. The DPW provided assistance to Sophronia Taylor prior to her death, which assistance resulted in a lien of $119,954.31 against her assets.

48. Ms. Taylor died on June 1, 2002, possessed of a parcel of real estate in Freeland, Maryland.

49. Cletus Taylor retained Respondent to represent him in the administration of his mother's estate.

50. By letter of August 26, 2002, Respondent notified DPW that she would be representing Cletus Taylor relative to the Taylor Estate.

51. On July 30, 2003, Respondent caused the Estate to be raised in the Orphans' Court for Baltimore County, Maryland.

52. By letter of May 21, 2004, Respondent requested of DPW the total amount for the lien against the Taylor Estate.

53. On September 24, 2004, Respondent deposited $57,995.32 to the Trust Account as the net proceeds of the sale on September 23, 2004 of the real estate in the Taylor Estate.

54. On September 29, 2004, in response to a call from DPW, Respondent's office advised DPW that a final accounting was being prepared for the Estate and that it must be approved by the court in Maryland.

55. By Trust Account check in the amount of $3,200, dated and paid on October 1, 2004, Respondent paid herself the fee due her from the Estate.

56. By letter of October 12, 2004, to the Register of Wills for Baltimore County, Respondent filed a proposed Order and Petition for Personal Representative Fees and a Proposed Order and Petition for Counsel Fees.

57. By letter of October 21, 2004, Respondent filed a Second and Final Administration Account for the Estate that reflected total assets of $53,279.40.

58. The Second and Final Administration Account reflected $43,127.34 due to DPW (the net balance available for payment of the lien), an attorney fee due Respondent of $3,240, with the balance due Cletus Taylor.

59. By Order of October 26, 2004, the Court approved the Second and Final Administration Account and directed that the reflected distributions be made.

60. Respondent took her fee prior to the Court's order.

61. Respondent had no authority to use any of the Taylor Estate funds for any purposes other than for which those funds were intended.

62. Respondent had no authority from DPW to use any of the Taylor Estate funds payable to DPW.

63. On October 29, 2004, a check for $8,000 (the bank could not provide the check so the payee is unknown) and unrelated to the Taylor Estate, was paid from the Trust Account leaving a balance less than the $54,795.32 Respondent should have been holding.

64. As of the time of the hearing, Respondent had not determined the purpose of the $8,000 disbursement.

65. As of December 9, 2004, Respondent's Trust Account was deficient by $13,863.87 as to the funds of the Taylor Estate.

66. Subsequent to December 9, 2004, additional payments from the Trust Account, unrelated to the Taylor Estate, reduced the balance.

67. By letter of March 31, 2005, Respondent sent Cletus Taylor two Trust Account checks in reimbursement of estate expenses he had paid, and as payment of his personal representative commission. These checks were paid on April 6, 2005.

68. Respondent's letter of March 31, 2005 to Cletus Taylor also enclosed a copy of a letter to DPW which reflected that a Trust Account check for $43,429.40 was enclosed in payment of the lien.

69. Bank records for the Trust Account reflect that the March 31, 2005 check Respondent wrote payable to DPW for the Estate lien was not on that date, or at any time thereafter, able to properly be paid from the Trust Account.

70. Respondent's letter of March 31, 2005 to DPW and the check for $43,429.40 were never sent to DPW.

71. On April 1, 2005, Respondent's bank paid a Trust Account check for $2,755, payable to Lisa A. Welkey, Esquire, and notated "Atty Fee for Sophronia Taylor."

72. Respondent's attorney fees for the Taylor Estate had already been paid on October 1, 2004.

73. Respondent does not know why she took a second fee, other than it must have been an error.

74. Between April 20, 2005 and October 6, 2008, DPW contacted Respondent's office at least 15 times regarding the need to pay the funds over to DPW from the Taylor Estate. Respondent was aware of these reasonable inquiries and failed to

promptly respond to DPW. Respondent acknowledged that these inquiries put her on notice that there was a problem with the funds due to DPW.

75. In response to the calls from DPW, Respondent or her staff told DPW that a check was sent to DPW with a transmittal letter of March 31, 2005.

76. The entire $43,429.40 due DPW was utilized by Respondent for purposes other than for which those funds were intended, and as reflected by the Trust Account activity.

77. By letter of May 19, 2008 to Respondent, DPW requested that she provide proof of payment of the lien against the Taylor Estate.

78. By letter of June 6, 2008, Respondent represented to DPW that the lien had been paid by transmittal of a check to DPW with her letter of May [sic] 31, 2005. Respondent also represented that she had requested a copy of the cancelled check from her bank.

79. Respondent's testimony at the hearing was that she requested a copy of the cancelled check and that the bank provided something to her, but it was a poor facsimile of the check.

80. Petitioner pointed out to Respondent that a cancelled check to DPW could not possibly exist. Respondent altered her testimony to her having received some facsimile from her bank that there was no such cancelled check, which she confirmed by speaking to someone at the bank. Respondent has never produced a copy of the facsimile she states she received from her bank in or about June 2008.

81. Respondent's testimony demonstrates that at least as of June 2008, she was aware that DPW had never received from her the $43,429.40 she received in

September 2004, which was distributable to DPW upon the October 2004 confirmation of the Taylor Estate proposed distribution.

82. In November 2008, DPW contacted Cletus Taylor regarding the nonpayment of the DPW lien by the Taylor Estate.

83. By letter of November 15, 2008, Cletus Taylor provided DPW with copies of the March 31, 2005 transmittal letter and the check to DPW that he had received from Respondent in 2005, when he understood that the estate administration had been concluded.

84. In late 2008, DPW requested of Cletus Taylor that he provide a copy of the check to DPW, as negotiated and he then called Respondent and told her that DPW wanted a copy of the cancelled check to DPW.

85. During the call from Cletus Taylor, Respondent told him that she was handling the problem and that DPW would soon be sent a copy of the cancelled check. Respondent also represented to Mr. Taylor that she had previously gotten a copy of the cancelled check from her bank and sent it to DPW but that it was not legible and she was then attempting to get a better copy of the check from the bank.

86. Respondent's statements to Mr. Taylor about the cancelled check to DPW were misrepresentations.

87. During the call from Cletus Taylor, he told Respondent that he expected her to take care of the obligation to DPW within 30 days and she assured him that she would. Mr. Taylor has not received any further communications from Respondent.

88. Respondent knew that as the Executor of the Taylor Estate, Mr. Taylor was personally liable for the obligations of the estate and DPW could look to him personally for payment of the monies due to DPW.

89. By letter of February 2, 2009 to Respondent, DPW advised her, inter alia, that relative to the Taylor Estate:

> This letter notifies you that the Department assesses personal liability against you in the amount of $43,429.40 pursuant to the foregoing provisions. You were the attorney for the above referenced estate. Although you state that you sent us a check for $43,429.40 we have no record of receipt of that check. You have not provided us with a copy of the back of the check showing that it was received and deposited into the State Treasury. Nor have you provided us with a bank statement showing that the check was cashed. You did not respond to our notice of proposed assessment offering you the opportunity to respond to these concerns. Accordingly, we therefore conclude that this money was never turned over to DPW, and that you converted the funds to your own use in violation of the above-cited provisions of law.

90. Respondent filed an appeal of the assessment against her by DPW.

91. Respondent's testimony that, other than the overdraft in the Trust Account on September 13, 2005, she never had any reason to believe that the Trust Account did not contain sufficient funds to cover payments that were owed to third parties until her receipt of the February 2, 2009 letter from DPW, is not credible.

92. In a telephone conversation on February 13, 2009, Respondent represented to Office of Disciplinary Counsel that she had long ago requested from her bank a copy of the cancelled check to DPW for the $43,429.40 and that she had just recently again requested a copy. Respondent represented that DPW had contacted her about the funds " a couple of times."

93. In the February 13, 2009 conversation with Petitioner, Respondent represented that she had disbursed the funds to DPW; stated that she could only conclude that DPW must have applied the funds to the account of the wrong person; and stated that if the funds had not been paid she would have immediately noticed it from her bank records.

94. Respondent's assertions to Petitioner on February 13, 2009 that she had twice requested copies of her cancelled check to DPW, and that DPW had only contacted her a couple of times, were misrepresentations.

95. Respondent's testimony that the first time she was aware of any actual problems with her payment to DPW of the $43,329.40 from the Taylor Estate was when DPW filed a lien against her and she was contacted by Petitioner in February 2008, is not credible.

96. Petitioner personally served a subpoena duces tecum on Respondent for all financial records for the Trust Account and related records, including but not limited to general and client ledgers, for the period of January 1, 2004 through the return date on the subpoena, as well as for financial records for the account from which Respondent transferred funds to cover the overdrafts.

97. Respondent did not provide to Petitioner any financial or related records for the Trust Account, or the accounts used as the source of funds to cover the overdrafts in the Trust Account, as required by the subpoena that was returnable on April 3, 2009.

98. In response to the subpoena, Respondent did provide a copy of the documents in her file for the administration of the Taylor Estate.

99. Following the telephone call between Respondent and Cletus Taylor in November 2008, Respondent never called Mr. Taylor to update him about the status of the check and the monies owed to DPW.

100. By Trust Account check dated September 22, 2009, in the amount of $43,429.40, payable to the Department of Public Welfare, Respondent paid the amount owed by the Taylor Estate.

101. The source of the payment by Respondent to DPW was $34,800 from a $70,000 fee Respondent received on May 12, 2009 and a September 22, 2009 deposit to the account of $8,629.40, comprised of cash of $5,000 and a check for $3,629.40 drawn on Respondent's office account. The balance in the Trust Account after the payment to DPW was $101.56.

102. Respondent could and should have undertaken a thorough review of her Trust Account records in September 2005, when she learned that the Coombs' funds she had received in December 2002 had never been disbursed, and that her Trust Account was overdrawn in September 2005, when both of the distribution checks for the Coombs' distribution caused the account to be overdrawn.

103. Respondent could and should have undertaken a thorough review of her Trust Account records when she learned on December 30, 2005, that her husband was leaving her and intending to take whatever assets he could. She cannot explain why she did not do a review at this time.

104. Respondent's bank immediately provided requested documents on the Trust Account to Respondent at the time of the September 2005 overdrafts and again around June 2008, when Respondent was communicating with DPW. Respondent could have obtained all records for her Trust Account and reconstructed the activity.

105. Between the receipt of the Coombs' funds in December 2002 and the payment of the Taylor Estate funds to DPW in September 2009, Respondent's Trust Account was always out-of-trust, at times in excess of $50,000.

106. Respondent acknowledged that the basis for the misconduct alleged in these proceedings was not primarily caused by her husband, and that avoiding such problems was her responsibility as the attorney in her law office.

107. Respondent knew in 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009, that funds she should have been holding inviolate in her Trust Account were being used for purposes other than for which the funds had been entrusted to her.

Quine- Fitzgerald Matter

108. On July 5, 2002, June Quine and her daughter, Barbara Fitzgerald, were injured in Georgia when a car driven by Varnie R. Dyson rear-ended the car which Ms. Quine's son-in-law was driving and in which she and her daughter were passengers.

109. Shortly after the accident, Ms. Quine and Ms. Fitzgerald retained Respondent to bring an action on their behalf relative to their personal injuries resulting from the accident.

110. Ms. Quine understood that Respondent was representing her and her daughter on a contingency fee basis.

111. By letter dated August 26, 2002, Respondent sent to the Claims Representative from GMAC, Mr. Dyson's automobile insurer, a copy of Ms. Quine's and Ms. Fitzgerald's medical records and advised her that Respondent would be sending updated records as they became available.

112. On July 2, 2004, on behalf of her clients, Respondent filed a civil complaint against Varnie R. Dyson in the U.S. District Court for the Middle District of Pennsylvania.

113. On or about August 2, 2004, Varnie R. Dyson, through his attorney, filed a Motion to Dismiss for Lack of Jurisdiction.

114. On August 18, 2004, Respondent filed a Brief in Opposition to Defendant's Motion to Dismiss for Lack of Jurisdiction. In her brief, Respondent argued

that Pennsylvania had personal jurisdiction over Mr. Dyson because his auto insurance carrier had an office in Pennsylvania.

115. Respondent explained to her clients that suit normally would be filed where the tort occurred and that they might end up in Georgia, in which case Respondent would obtain local counsel in Georgia.

116. By letter of August 26, 2004 to counsel for Mr. Dyson, Respondent set forth her settlement demands for Ms. Quine of $35,000 and Ms. Fitzgerald of $25,000.

117. On September 30, 2004, Judge James M. Munley granted Defendant's Motion to Dismiss. The court held that plaintiff failed to establish that defendant could properly be sued in Pennsylvania and had provided no authority to establish that the contacts with Pennsylvania of the defendant's insurance company were relevant.

118. Respondent did not advise her clients that they should seek independent legal advice regarding their original claims and whether they had any possible claims against Respondent for having possibly mishandled their case.

119. Respondent claims she recognized that she had malpractice exposure as a result of the dismissal and claims she put her carrier on notice. Respondent at that time did not see her clients as adversaries and put nothing in writing to them about their being out of court.

120. On November 1, 2004, Respondent filed an appeal of Judge Munley's decision in the Third Circuit Court of Appeals.

121. Respondent's fee agreements with Ms. Quine and Ms. Fitzgerald specifically provided that the agreements did not cover any appeals. Respondent explained that she would ordinarily file an appeal in such circumstances and that would be true if she might have some liability to the client.

122. By letter of December 8, 2005 to Mr. Dyson's attorney, Respondent sent him Statements of Estimated Value of the losses of Ms. Quine and Ms. Fitzgerald in regard to the motor vehicle accident of July 5, 2002.

123. Sometime prior to December 19, 2005, counsel for Mr. Dyson offered to settle the claims of Respondent's clients for $5,000. Respondent considered this a nuisance value offer.

124. By letter of December 19, 2005 to Respondent, Mr. Dyson's attorney acknowledged receipt of the Statements of Value, noted that he had not received a response to his offer of settlement, and stated that given the status of the case her estimated values were very unrealistic.

125. Respondent had no authority to accept any settlement offer and believes she conveyed the offer to her clients, who rejected the offer. Respondent believes she orally advised Mr. Dyson's counsel that the offer was rejected, which was her last communication with him.

126. Ms. Quine and Ms. Fitzgerald acknowledge being told about the $5,000, but that it was months later, after the file copy was received in December 2006, and they were simply told that it had been refused.

127. On or about January 19, 2006, the Third Circuit affirmed the decision of the District Court dismissing the case for lack of jurisdiction.

128. Respondent has no specific recollection of having told her clients of the dismissal of their case.

129. After the Third Circuit decision, Ms. Quine continued to call Respondent to find out the status of the case. When she was able to speak to Respondent, she was simply told that everything was fine.

130. In late 2006, Ms. Quine asked Respondent for a copy of her entire file. Respondent complied with this request.

131. In early 2007, Respondent advised Ms. Quine that she and her daughter would have to go to Georgia for a hearing in September 2007. Respondent also advised her that Respondent would send Ms. Quine a notice in writing advising her of the date.

132. These were intentional misrepresentations as Respondent knew in January 2006 that the Third Circuit Court's decisions meant that her clients were out of court.

133. The clients attempted to speak to Respondent about the suit in Georgia but she did not return their calls.

134. Ms. Quine and Ms. Fitzgerald did not realize the suit in Pennsylvania was dismissed until 2007 when they reviewed the documents provided by Respondent.

135. Respondent never attempted to initiate a transfer of the Quine and Fitzgerald litigation to the proper jurisdiction, nor did she attempt to obtain Georgia counsel.

136. Respondent never initiated any action in Georgia on behalf of her clients.

137. Respondent has not produced copies of any correspondence to Ms. Quine from 2007 or thereafter.

138. Respondent understands that just recently her insurance carrier attempted to contact Ms. Quine and Ms. Fitzgerald.

Balliet Matter

139. Donna Balliet had property line and easement type disputes, of an ongoing nature, and retained Respondent to represent her in May 2004. She paid a non-refundable retainer of $2,575.

140. Respondent successfully undertook to have an existing court order modified.

141. Respondent brought and prosecuted contempt proceedings in attempts to resolve Ms. Balliet's disputes with her neighbor.

142. In June 2005, Ms. Balliet and Respondent entered into a second fee agreement relative to a quiet title action. The agreement provided for a non-refundable fee of $2,000 and advanced costs of $593, which were paid on or about June 23, 2005.

143. The advanced costs of $593 were fiduciary funds that Respondent was required to maintain in trust.

144. The $593 in costs was not deposited by Respondent to her Trust Account.

145. In 2006, Respondent filed and processed a quiet title action for Ms. Balliet and any costs incurred were paid by Respondent from some source other than the $593 Ms. Balliet had paid in June 2005.

146. Respondent and her client had numerous discussions about the manner of addressing the ongoing disputes with the neighbor, but none of the resultant understandings were set forth in any correspondence or other writings from Respondent to Ms. Balliet. There were disagreements and misunderstandings between Respondent and her client about how the legal goals of Ms. Balliet were to be handled.

147. Petitioner suggested to Respondent in late 2008, that Respondent meet with Ms. Balliet and come to firm agreements about the nature of any continuing representation and put it in writing.

148. By letter of January 9, 2009, Respondent advised her client that she would do whatever was necessary to protect her interests in a pending case but that Ms. Balliet should retrieve her file, at which time an accounting would be provided.

149. Ms. Balliet obtained her file from Respondent but never received an accounting.

150. Respondent testified on her own behalf.

151. Respondent has practiced law since 1990 and has been a sole practitioner since 1994. Her office manager at the time of the misconduct was Richard Haeseker, her husband. At the time of the hearing, she was estranged from Mr. Haeseker and in the process of divorce.

152. The separation from Mr. Haeseker occurred on December 30, 2005, after Respondent learned he was leaving her for someone else.

153. Respondent moved out of the marital home but did not move financial records out of her home office. Respondent did not think that anything could happen to them.

154. Respondent did not realize that Mr. Haeseker took possession of various financial records of Respondent's law firm that were maintained in Respondent's home office.

155. Respondent noticed irregularities with the records in approximately 2007, but admits that she rarely went into the cabinets where the records were filed.

156. Respondent filed a Protection From Abuse against Mr. Haeseker in March 2007 to remove him from the home. The police had to physically remove him from the residence because he was threatening to kill Respondent and others and had barricaded himself in the home.

157. At that time, Respondent was able to access Mr. Haeseker's vehicle and found containers filled with her client fee agreements, time records, and copies of checks. She took possession of those records.

158. Records were still missing, so Respondent brought in a computer technician, who discovered that the computer tower was not the same as it had been previously. She had her divorce attorney contact Mr. Haeseker's divorce attorney to track down the files. Respondent still does not know the whereabouts of some of her files, as well as software that had been utilized to track her cases.

159. Respondent understands and acknowledges that as the attorney in her office, it was her obligation to maintain all records.

160. Respondent admits that she let all of her clients down.

161. Respondent received an Informal Admonition in December 2007 for her mishandling of two client matters.

162. Respondent provided two letters from an attorney and a businessman who believe that Respondent is a person of good character.

163. Respondent cooperated in the disciplinary proceedings, as exhibited by the extensive stipulations and admissions.

III. CONCLUSIONS OF LAW

By her actions as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.1 – A lawyer shall provide competent representation to a client.

2. RPC 1.2(a) – A lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rules 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.

3. RPC 1.4(a) – A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

4. RPC 1.4(b) – A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

5. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

6. RPC 1.7(a) – Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

7. RPC 1.15(a) (former version) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account

maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation.

8. RPC 1.15(b) (former version) – Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

9. RPC 4.1(a) – In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

10. RPC 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as lawyer in other respects.

11. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of a three-charge Petition for Discipline filed against Respondent. Charge I relates to Respondent's representation of the personal representative of the Taylor Estate, Respondent's escrowing of funds in September 2004 of which $43,429.40 was payable to the Department of Public

Welfare, and the misuse of the funds, with restitution not made until September 2009. Misuse of the funds of the Wisneski Estate and of Mr. and Mrs. Coombs also occurred in 2003 and 2004.

Charge II relates to Respondent's representation of June Quine and Barbara Fitzgerald relating to injuries arising from a car accident in July 2002 in Georgia, the misfiling and resultant dismissal in 2004 of litigation in Pennsylvania, and Respondent's failure to properly disclose the circumstances.

Charge III relates to the representation of Donna Balliet, the failure to appropriately communicate, failure to maintain costs in escrow, and the failure to provide an accounting to Ms. Balliet.

By Joint Stipulation and Supplemental Joint Stipulation, most of the factual basis of the Charges was admitted, as well as some of the Rules violations.

The record demonstrates that Respondent's misconduct began in December 2002, when Respondent failed to inform her clients, Mr. and Mrs. Coombs, of her receipt of their settlement proceeds. The misconduct continued throughout at least 2008, when Respondent promised to provide an accounting to her client, Ms. Balliet, yet failed to do so, even as of the date of the disciplinary hearing. In the intervening years, Respondent's Trust Account was out-of-trust, and she misused funds of other clients, most notably the $43,429.40 due to DPW. This money was received by Respondent in September 2004, yet not paid over to DPW until September 2009.

Respondent made misrepresentations to Cletus Taylor, DPW and Petitioner relative to the funds due to DPW. She also made misrepresentations to Ms. Quine and Ms. Fitzgerald, when she failed to disclose that their suit had been dismissed, and told them they still had a viable remedy in another jurisdiction.

In the midst of the instant misconduct, Respondent received an Informal Admonition in December 2007 for her misconduct in two other client matters. The problems were analogous to that occurring in the instant proceeding, as Respondent did not advise a client of a Motion for Summary Judgment in favor of the adverse party, failed to respond to reasonable inquiries, failed to diligently pursue the legal affairs of a client, and did not provide requested documents.

Respondent's personal life caused her many difficulties during the time frame of the misconduct. Foremost was her relationship with Richard Haeseker, her estranged husband, who had been her office manager. During the time frame when Mr. Haeseker was the office manager, Respondent placed total responsibility and trust in him to handle all office records and accounts. She admits that she rarely reviewed any of the account records. This trust was misplaced, unfortunately, as Mr. Haeseker abruptly left Respondent in late December 2005, at which time she received credible information that he intended to take control of whatever assets he could. Respondent took steps to secure her bank accounts and possessions, but somehow failed to secure her office files, which contained records of her Trust Account, or to review her records. Respondent did not become aware that files were missing until much later, in 2007. Even at that point, Respondent did not undertake to obtain records from the bank and review them. Another personal difficulty experienced by Respondent was her involvement in a severe car accident in 2007 from which it took 13 months to recover.

Respondent's misconduct reflects her serious failure to recognize her obligations to her clients and third parties. This Board is tasked with the responsibility of protecting the public from unfit attorneys and maintaining the integrity of the legal system. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). Respondent's actions

show her to be an unfit lawyer. She continuously engaged in conduct that was contrary to the best interest of her clients. When entrusted funds were gone, she ignored repeated inquiries about the matter, as in the DPW matter. When her clients were put out-of-court because of her actions, she ignored continual inquiries or fabricated a story to appease the clients, as in the Quine matter. Respondent did not always provide credible explanations for her actions, and altered her testimony accordingly.

While there is no per se discipline in Pennsylvania, the conversion of client or third party funds warrants serious discipline. Office of Disciplinary Counsel v. Lucarini. 472 A.2d 186 (Pa. 1983). This discipline has ranged from outright disbarment to suspension of three, four or five years duration. In the matter of Office of Disciplinary Counsel v. Darlene C. Snowden, 24 DB 2009, No. 1513 Disciplinary Docket No. 3 (Pa. Sept, 9, 2009), a five year period of suspension was imposed following the attorney's conversion of $15,720 in funds owed to DPW in satisfaction of a lien. A four year suspension was imposed in the matter of Office of Disciplinary Counsel v. Carol J. Weaver, 56 DB 2004, 1011 Disciplinary Docket No. 3 (Pa. May 27, 2005), following the attorney's conversion of $21,000 of entrusted funds. This attorney failed to participate in any manner in the disciplinary process, including failing to appear at the hearing.

In the case of Office of Disciplinary Counsel v. Gwendolyn N. Harmon, No. 15 DB 2003, 970 Disciplinary Docket No. 3 (Pa. Dec. 13, 2004), the attorney commingled entrusted funds with her own funds, used client funds to pay personal bills, and utilized entrusted funds of a client to pay prior clients whose funds had been improperly utilized by the attorney. This attorney was suspended for a period of three years. Other similar cases resulting in suspensions for a period of three years are Office of Disciplinary Counsel. v. Lawrence T. Foti, No. 89 DB 2001, 835 Disciplinary Docket No. 3 (Pa. July 24, 2003) and

Office of Disciplinary Counsel v. John T. Olshock, No. 28 DB 2002, 862 Disciplinary Docket No. 3 (Pa. Oct. 24, 2003).

The Hearing Committee has recommended a suspension of five years. The Board's review of this matter in its entirety persuades us that a suspension of three years is appropriate discipline for this particular attorney. Her misconduct is very serious, yet the personal difficulties she experienced provide some explanation for what was occurring at the time. We also note her cooperation with Petitioner, as reflected in the extensive stipulations that were able to be reached by the parties prior to the hearing. A recommendation of three years is supported by prior cases.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Lisa Anne Welkey, be Suspended from the practice of law for a period of three years.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: Gabriel Bevilacqua
Gabriel L. Bevilacqua, Board Member

Date: March 10, 2011

Board Member Todd did not participate in the adjudication.